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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

DAVID BRYANT ARRIETA,

Defendant and Appellant.

B292286

(Los Angeles County
Super. Ct. No. KA117314)

APPEAL from an order of the Superior Court of Los Angeles County, Rogelio G. Delgado, Judge. Affirmed.

Lori A. Quick, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance by Plaintiff and Respondent.

In February 2018, the Los Angeles County District Attorney charged defendant David Bryant Arrieta (defendant) with driving or taking a vehicle without consent (Veh. Code, § 10851(a)), a felony, and possessing a controlled substance, namely, methamphetamine (Health & Saf. Code, § 11377), which is a misdemeanor. The information filed against defendant further alleged he was ineligible for probation because he had two prior felony convictions (Pen. Code, § 1203(e)(4)) and he was subject to prior prison term enhancements based on nine prior convictions (Pen. Code, § 667.5). Defendant pled no contest to both charges. The trial court dismissed the prior prison term allegations and sentenced defendant to three years in county jail for the driving or taking a vehicle without consent conviction and 364 days, to be served concurrently, for the controlled substance conviction.

In July 2018, defendant filed a Penal Code section 1170.18 petition for recall of sentence. His petition principally contended “Prop. 47 amended [Penal Code] section 11377 to punish as a misdemeanor the possession of controlled substances.” The trial court denied the petition because defendant’s Health and Safety Code section 11377 conviction was “already a misdemeanor.”¹

Defendant noticed an appeal from the trial court’s ruling on his sentence recall petition. This court appointed appellate counsel to represent defendant. After examining the record,

¹ At the hearing on the petition, the prosecution also represented that defendant’s Penal Code section 10851(a) conviction, which was mentioned only in passing in defendant’s sentence recall petition, was in any event an offense where the value of the property taken exceeded \$950.

counsel filed an opening brief raising no issues. On January 7, 2019, this court advised defendant he had 30 days to personally submit any contentions or issues he wished us to consider. We received no response.

We have examined the appellate record and are satisfied defendant's attorney has complied with the responsibilities of counsel and no arguable issue exists. (*Smith v. Robbins* (2000) 528 U.S. 259, 278-82; *People v. Kelly* (2006) 40 Cal.4th 106, 122-24; *People v. Wende* (1979) 25 Cal.3d 436, 441.)

DISPOSITION

The order denying defendant's Penal Code section 1170.18 petition is affirmed.

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BAKER, Acting P. J.

We concur:

MOOR, J.

KIM, J.